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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

May 08, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CEDRIC S.,<sup>1</sup>

No. 2:23-cv-00325-EFS

Plaintiff,

v.

MARTIN O'MALLEY, Commissioner of  
Social Security,

Defendant.

**ORDER PARTIALLY REVERSING  
THE ALJ'S DENIAL OF BENEFITS,  
AND REMANDING FOR FURTHER  
PROCEEDINGS**

Due to degenerative disc disease of the lumbar spine, hypertension, a ruptured biceps tendon, diabetes, corneal scar, obesity, uveitis, and gastroenteritis, Plaintiff Cedric S. alleges that he is unable to work fulltime and applied for disability insurance benefits and supplemental security income benefits. He appeals the denial of benefits by the Administrative Law Judge (ALJ) on the grounds that the ALJ improperly assessed Plaintiff's credibility and improperly

<sup>1</sup> For privacy reasons, Plaintiff is referred to by first name and last initial or as "Plaintiff." See LCivR 5.2(c).

1 analyzed the medical opinions of record. As is explained below, the ALJ erred in  
2 evaluating Plaintiff's subjective complaints and failed to differentiate between  
3 Plaintiff's symptoms before and after his fusion surgery in May 2021. Based on this  
4 error, the ALJ failed to credit the supported testimony of Plaintiff for the period  
5 from, minimally, April 2020 through May 2021. Therefore, this matter is remanded  
6 for the ALJ to determine the disability period.

7 **I. Background**

8 In February 2021, Plaintiff filed an application for benefits under Title 2 and  
9 an application for benefits under Title 16, claiming disability beginning April 28,  
10 2020, based on the physical impairments noted above.<sup>2</sup>

11 After the agency denied Plaintiff benefits, ALJ Marie Palachuk held a  
12 telephone hearing in March 2023 at which Plaintiff appeared with his  
13 representative.<sup>3</sup> Plaintiff and a vocational expert testified.<sup>4</sup> After the hearing, the  
14 ALJ issued a decision denying benefits.<sup>5</sup> The ALJ found Plaintiff's alleged

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18 <sup>2</sup> AR 204, 225.

19 <sup>3</sup> AR 35-56.

20 <sup>4</sup> *Id.*

21 <sup>5</sup> AR 14-34. Per 20 C.F.R. §§ 404.1520(a)-(g), 416.920(a)-(g), a five-step evaluation  
22 determines whether a claimant is disabled.

1 symptoms were not entirely consistent with the medical evidence and the other  
2 evidence.<sup>6</sup> As to medical opinions: the ALJ found:

- 3 • The opinions of treating source Tyson Andelin, PA-C, to be not  
4 persuasive.
- 5 • The opinions of DSHS consultant Myrna Palasi, MD, to be  
6 unpersuasive.
- 7 • The opinions of state agency evaluator Lisa Hacker, PhD, to be  
8 persuasive.
- 9 • The opinions of state agency evaluators Merry Alto, MD, and Robert  
10 Stuart, MD, to be persuasive.<sup>7</sup>

11 The ALJ also considered the third-party statement of Megan Rolly but did not rate  
12 its persuasiveness.<sup>8</sup> As to the sequential disability analysis, the ALJ found:

- 13 • Plaintiff meets the insured status requirements through March 31,  
14 2026.
- 15 • Step one: Plaintiff had not engaged in substantial gainful activity  
16 since April 28, 2020, the alleged onset date.
- 17 • Step two: Plaintiff had the following medically determinable severe  
18 impairment: degenerative disc disease of the lumbar spine with fusion

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20<sup>6</sup> AR 22-24.

21<sup>7</sup> AR 24-25.

22<sup>8</sup> AR 25-26.

1           in May 2021. The ALJ also found that obesity, hypertension,  
2           ruptured biceps tendon, diabetes, corneal scar, uveitis, gastroenteritis,  
3           and abscess were non-severe.

- 4           • Step three: Plaintiff did not have an impairment or combination of  
5           impairments that met or medically equaled the severity of one of the  
6           listed impairments.  
7           • RFC: Plaintiff had the RFC to perform a full range of light work with  
8           the following exceptions:

9           [Plaintiff] can occasionally perform all postural activities  
10          (climbing, balancing, stooping, kneeling, crouching and  
11          crawling); he can occasionally reach with the right (dominant)  
12          upper extremity; he must avoid concentrated exposure to  
13          unprotected height and moving/dangerous machinery.

- 14          • Step four: Plaintiff is unable to perform past relevant work of an  
15          industrial truck operator, store laborer, and sales clerk.  
16          • Step five: considering Plaintiff's RFC, age, education, and work  
17          history, Plaintiff could perform work that existed in significant  
18          numbers in the national economy, such as an assembly machine  
19          tender (DOT 754.685-014), usher (DOT 344.677-014), and counter  
20          clerk (DOT 249.366-010).<sup>9</sup>

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<sup>9</sup> AR 19-27.  
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1 Plaintiff timely requested review of the ALJ's decision by the Appeals  
2 Council and now this Court.<sup>10</sup>

3 **II. Standard of Review**

4 The ALJ's decision is reversed "only if it is not supported by substantial  
5 evidence or is based on legal error,"<sup>11</sup> and such error impacted the nondisability  
6 determination.<sup>12</sup> Substantial evidence is "more than a mere scintilla but less than a  
7 preponderance; it is such relevant evidence as a reasonable mind might accept as  
8 adequate to support a conclusion."<sup>13</sup>

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10 AR 198.

11 <sup>11</sup> *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). See 42 U.S.C. §§ 405(g),  
13 1383(g).

12 <sup>12</sup> *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) ), superseded on other  
13 grounds by 20 C.F.R. §§ 404.1520(a), 416.920(a) (recognizing that the court may  
14 not reverse an ALJ decision due to a harmless error—one that "is inconsequential  
15 to the ultimate nondisability determination").

16 <sup>13</sup> *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir.  
17 1997)). See also *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The  
18 court "must consider the entire record as a whole, weighing both the evidence that  
19 supports and the evidence that detracts from the Commissioner's conclusion," not  
20 simply the evidence cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*,  
21 22

### 1 III. Analysis

2 Plaintiff argues the ALJ failed to properly consider the longitudinal record  
3 when assessing the medical opinions and Plaintiff's symptom testimony, and that  
4 this resulted in an error at step five. The Commissioner argues that the ALJ's  
5 factual findings, which deserve deference, are supported by substantial evidence.  
6 As is explained below, the ALJ's rejection of Plaintiff's symptom testimony and the  
7 medical opinions, for at least a fourteen-month period, is not supported by  
8 substantial evidence.

9 **A. Symptom Reports: Plaintiff establishes consequential error.**

10 Plaintiff argues the ALJ failed to provide valid reasons for discounting his  
11 symptom reports regarding his back pain. The ALJ offered several reasons for  
12 discounting Plaintiff's symptom reports—each reason is addressed below.

13 1. Standard

14 The ALJ must identify what symptom claims are being discounted and  
15 clearly and convincingly explain the rationale for discounting the symptoms with  
16 supporting citation to evidence.<sup>14</sup> This requires the ALJ to “show his work” and  
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18 143 F.3d 383, 386 (8th Cir. 1998) (“An ALJ’s failure to cite specific evidence does  
19 not indicate that such evidence was not considered[.]”).

20 <sup>14</sup> *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022). Factors to be considered by  
21 the ALJ when evaluating the intensity, persistence, and limiting effects of a  
22 claimant’s symptoms include: 1) daily activities; 2) the location, duration,  
23

1 provide a “rationale . . . clear enough that it has the power to convince” the  
 2 reviewing court.<sup>15</sup>

3       When examining a claimant’s symptoms, the ALJ utilizes a two-step inquiry.  
 4 “First, the ALJ must determine whether there is objective medical evidence of an  
 5 underlying impairment which could reasonably be expected to produce the pain or  
 6 other symptoms alleged.”<sup>16</sup> Second, “[i]f the claimant meets the first test and there  
 7 is no evidence of malingering, the ALJ can only reject the claimant’s testimony  
 8 about the severity of the symptoms if [the ALJ] gives ‘specific, clear and convincing  
 9 reasons’ for the rejection.”<sup>17</sup> General findings are insufficient; rather, the ALJ must

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 11 frequency, and intensity of pain or other symptoms; 3) factors that precipitate and  
 12 aggravate the symptoms; 4) the type, dosage, effectiveness, and side effects of any  
 13 medication the claimant takes or has taken to alleviate pain or other symptoms; 5)  
 14 treatment, other than medication, the claimant receives or has received for relief of  
 15 pain or other symptoms; 6) any non-treatment measures the claimant uses or has  
 16 used to relieve pain or other symptoms; and 7) any other factors concerning the  
 17 claimant’s functional limitations and restrictions due to pain or other symptoms.

18 Soc. Sec. Rlg. 16-3p, 2016 WL 1119029, at \*7; 20 C.F.R. §§ 404.1529(c), 416.929(c);  
 19 *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014).

20       <sup>15</sup> *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022) (alteration added).  
 21

<sup>16</sup> *Molina*, 674 F.3d at 1112.

<sup>17</sup> *Ghanim* 763 F.3d at 1163(quoting *Lingenfelter*, 504 F.3d at 1036).

1 identify what symptom claims are being discounted and what evidence undermines  
 2 these claims.<sup>18</sup> “The clear and convincing standard is the most demanding required  
 3 in Social Security cases.”<sup>19</sup> Therefore, if an ALJ does not articulate specific, clear,  
 4 and convincing reasons to reject a claimant’s symptoms, the corresponding  
 5 limitations must be included in the RFC.<sup>20</sup>

6       2.     Plaintiff’s Testimony

7       On March 2, 2023, Plaintiff appeared with her attorney for a hearing before  
 8 ALJ Marie Palachuk.<sup>21</sup> Plaintiff testified and vocational expert Susan Foster  
 9 testified.<sup>22</sup> Plaintiff testified that he graduated from high school in the mid 1990’s  
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12       <sup>18</sup> *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995), and *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently explain why he discounted claimant’s symptom claims)).

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14       <sup>19</sup> *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

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16       <sup>20</sup> *Lingenfelter*, 504 F.3d at 1035 (“[T]he ALJ failed to provide clear and convincing reasons for finding Lingenfelter’s alleged pain and symptoms not credible, and therefore was required to include these limitations in his assessment of Lingenfelter’s RFC.”).

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18       <sup>21</sup> AR 35-56.

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20       <sup>22</sup> *Id.*

1 and that he has had many injuries in his lifetime but always returned to work.<sup>23</sup>  
2 Plaintiff testified that he injured his back in April 2020, and that the majority of  
3 his pain is in his lower back and travels down his leg on the right side.<sup>24</sup> It took a  
4 year for surgery because he was sent back to work but later needed a fusion and he  
5 needed to get MRI's to show his injury.<sup>25</sup> He said he lies down for four hours a day  
6 to relieve pain.<sup>26</sup>

7 Plaintiff testified that after the surgery he is still in pain but can be on his  
8 feet for up to two hours.<sup>27</sup> He said that he can sit for two hours but would also need  
9 to lift his legs. He said that he was terminated from pain medication because he  
10 had a one-time usage of cocaine.<sup>28</sup> He said that he was off narcotic medication for  
11 two months and needed to lie down more. He was not prescribed a walker but he  
12 used one until it became more painful to bend over it.<sup>29</sup> He needs help with  
13 dressing and bathing and cannot bend because of the fusion in his back.<sup>30</sup>

14 \_\_\_\_\_  
15 <sup>23</sup> AR 39-40.

16 <sup>24</sup> AR 40.

17 <sup>25</sup> *Id.*

18 <sup>26</sup> AR 41.

19 <sup>27</sup> *Id.*

20 <sup>28</sup> AR 42.

21 <sup>29</sup> AR 43.

22 <sup>30</sup> *Id.*

1 He said that in March 2022, he tried to go back to work as a forklift operator  
2 but he could only last a few months because he had to pull himself up with his  
3 arms.<sup>31</sup> He was still in pain and had had the surgery in the summer of 2021.<sup>32</sup> He  
4 was not allowed anymore physical therapy and was still taking medication. He  
5 injured his arm in July 2022, and cannot write or type for more than 15 to 20  
6 minutes without stopping and having to rest for 30 minutes.<sup>33</sup> He has to rest his  
7 arm for 3 to 4 hours a day.<sup>34</sup> He can do things like grasping and washing dishes for  
8 15 to 20 minutes as well.<sup>35</sup> He can only lift 5 to 10 pounds with this right hand and  
9 can lift more with his left but it hurts his back.<sup>36</sup> He said that his medication  
10 makes him drowsy and he has trouble concentrating.<sup>37</sup> Plaintiff stated that he  
11 completed high school and a little college.<sup>38</sup>

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<sup>31</sup> AR 44.

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<sup>32</sup> *Id.*

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<sup>33</sup> AR 45.

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<sup>34</sup> *Id.*

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<sup>35</sup> AR 46.

20

<sup>36</sup> *Id.*

21

<sup>37</sup> *Id.*

22

<sup>38</sup> *Id.*

23

1 Plaintiff said that he is 5'6" and weighs 190 pounds.<sup>39</sup> He said that he has  
2 bad days where his pain will keep him up at night and that he has difficulty with  
3 urination where he will wet himself.<sup>40</sup> About three to four days a month he will  
4 have a bad day and not get out of bed.<sup>41</sup> Plaintiff said that at Harbor Freight he  
5 worked in the warehouse area stocking and in the store area doing sales.<sup>42</sup> He  
6 worked for McDonald's part-time.<sup>43</sup> He worked for LSC Communications and at  
7 Donnelly and Sons he drove a forklift. He drove a hoist truck and would get bins of  
8 things and put them in the truck.<sup>44</sup> He also worked as a parts delivery person for a  
9 car dealer.<sup>45</sup>

10       3.     The ALJ's Findings

11       The ALJ found Plaintiff's statements concerning the intensity, persistence,  
12 and limiting effects of his "medically determinable impairments" were only  
13 partially inconsistent with the objective medical evidence, that the record indicates  
14 that Plaintiff's condition improved with treatment, that Plaintiff was noncompliant

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16       <sup>39</sup> AR 47.

17       <sup>40</sup> *Id.*

18       <sup>41</sup> *Id.*

19       <sup>42</sup> AR 48.

20       <sup>43</sup> *Id.*

21       <sup>44</sup> AR 48-49.

22       <sup>45</sup> AR 49.

1 with treatment, and that Plaintiff's allegations were inconsistent with his daily  
2 activity.<sup>46</sup>

3       4. Relevant Medical Records

4       On May 7, 2019, Plaintiff presented to William Wagner, MD, with  
5 complaints of lower back and right leg problems.<sup>47</sup> Plaintiff reported having had an  
6 L4-5 discectomy and stated his symptoms initially improved but then got worse.<sup>48</sup>  
7 On examination range of motion of the back was diminished, there was tenderness  
8 to palpation over the right lower spine, tenderness to palpation in the right SI  
9 joint, and mild tenderness in the gluteal area, muscle strength was normal and  
10 gait was symmetric and steady.<sup>49</sup> Dr. Wagner assessed disc protrusion/extrusion at  
11 L4-5 greater on right and contributing to L5 nerve root irritation.

12       On December 30, 2019, Plaintiff presented to PA Andelin, reporting that  
13 three days prior at work he had lifted items and felt a "pop" in his back but had  
14 minimal symptoms at the time.<sup>50</sup> Over the next three days, he had increasing pain  
15 and muscle spasming.<sup>51</sup> He was assessed with sprain of the ligaments of the

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17       <sup>46</sup> AR 22-24.

18       <sup>47</sup> AR 641.

19       <sup>48</sup> *Id.*

20       <sup>49</sup> AR 643-644.

21       <sup>50</sup> AR 893.

22       <sup>51</sup> *Id.*

1 lumbar spine.<sup>52</sup> He was prescribed cyclobenzaprine and told to return in a week for  
2 follow up.<sup>53</sup>

3 On February 11, 2020, Plaintiff presented to PA Andelin, reporting that his  
4 back pain had not resolved and had increased since his last visit on December 30,  
5 2019.<sup>54</sup> Plaintiff reported that his employer had told him he would be in trouble if  
6 he returned for his scheduled January 6, 2020 appointment.<sup>55</sup> On examination,  
7 Plaintiff had localized moderately severe muscle spasms of the left lateral lower  
8 lumbar and left lateral mid thoracic back region.<sup>56</sup> Plaintiff complained of pain in  
9 his left lower back radiating into his legs.<sup>57</sup> He had normal muscle tone and bulk,  
10 intact nerves and antalgic gait, favoring the left hip and leg.<sup>58</sup>

11 On February 14, 2020, Plaintiff presented to Glenn Saxby, MD.<sup>59</sup> He  
12 reported that he had back pain for a month following a work injury that radiated  
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14  
15 <sup>52</sup> AR 894.

16 <sup>53</sup> *Id.*

17 <sup>54</sup> AR 889.

18 <sup>55</sup> *Id.*

19 <sup>56</sup> AR 891.

20 <sup>57</sup> *Id.*

21 <sup>58</sup> *Id.*

22 <sup>59</sup> AR 469.

1 into the leg causing pain and numbness, but did not have weakness.<sup>60</sup> He also  
2 reported that he had increased urinary frequency but no incontinence.<sup>61</sup> On  
3 examination, he had tenderness to the left SI joint, midline lumbar tenderness, and  
4 positive straight leg raising.<sup>62</sup> On February 23, 2020, Plaintiff presented to John  
5 Jamison, ARNP, with spasms of the muscles in his low back and sprained ligaments  
6 in his low back.<sup>63</sup> He was diagnosed with lumbago with sciatica, muscles weakness  
7 and other abnormalities of gait due to weakness, pain, and joint stiffness.<sup>64</sup> ARNP  
8 Jamison noted major loss of flexion with pain, major loss of extension with pain,  
9 and moderate to minimal loss of side gliding.<sup>65</sup> He had an antalgic gait with pain  
10 during weightbearing.<sup>66</sup>

11 A physical therapy note by Ryan Carpenter, PT, dated March 9, 2020,  
12 indicates that Plaintiff was admitted for muscle spasms in the low back.<sup>67</sup> Plaintiff  
13 was slow to move and reported that he had not been able to do his physical therapy  
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15 <sup>60</sup> AR 469.

16 <sup>61</sup> *Id.*

17 <sup>62</sup> AR 470.

18 <sup>63</sup> AR 464.

19 <sup>64</sup> *Id.*

20 <sup>65</sup> AR 466.

21 <sup>66</sup> *Id.*

22 <sup>67</sup> AR 463.

1 exercises because after work he needed to go to bed.<sup>68</sup> PT Carpenter noted that  
2 Plaintiff's function had improved with physical therapy but seemed to have  
3 plateaued.<sup>69</sup>

4 On April 6, 2020, Plaintiff presented to PA Andelin with worsening back  
5 pain.<sup>70</sup> He reported that he could not bend over to put on his shoes by himself and  
6 needed help and could not sleep at night due to pain which was now a level of  
7 10/10.<sup>71</sup> On examination, there was moderate to severe tenderness to palpation of  
8 the lumbar spine, and Plaintiff was unable to perform slump test or straight leg  
9 raising.<sup>72</sup> Plaintiff was assessed with lumbago with sciatica, left side; spasm of  
10 back muscles; and sprain of ligaments of lumbar spine.<sup>73</sup>

11 On April 20, 2020, Plaintiff was referred by Tyson Andelin, PA-C, to Moses  
12 Lake Sports Physical Therapy with a diagnosis of spasm of back muscles; sprain of  
13 ligaments of lumbar spine, subsequent encounter; back pain; and lumbago with  
14 sciatica, left side.<sup>74</sup> He ordered physical therapy for 3 months due to back pain and

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15  
16<sup>68</sup> *Id.*

17<sup>69</sup> AR 464.

18<sup>70</sup> AR 870.

19<sup>71</sup> *Id.*

20<sup>72</sup> AR 872.

21<sup>73</sup> *Id.*

22<sup>74</sup> AR 446.

1 left leg pain.<sup>75</sup> On April 21, 2020, Plaintiff presented to PT Joshua Bruce, reporting  
2 significant back pain with radiating pain in both legs, limited activity tolerance  
3 and difficulty finding a comfortable position.<sup>76</sup> Past history included chronic pain  
4 and disc herniation surgery in 2014 at the L5 level.<sup>77</sup> On examination, Plaintiff  
5 had difficulty rising from a chair and walking, tenderness across the low back, and  
6 limited range of motion with side bending, rotation and forward being most  
7 difficult.<sup>78</sup> Straight leg raising was positive on the right and the core muscles and  
8 hip muscles were diminished.<sup>79</sup> At an April 23, 2020 appointment, PA Bruce noted  
9 similar findings and modified his program but stated that if his pain did not  
10 subside they might have to discontinue therapy until an MRI could be done.<sup>80</sup>

11 On April 27, 2020, Plaintiff presented to Jodi O'Shea, PA-C, with back  
12 pain.<sup>81</sup> Plaintiff reported back pain with leg weakness that had been increasing  
13 since he lifted something at work in December 2019 and felt a "pop" in his back.<sup>82</sup>

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14  
15 <sup>75</sup> *Id.*

16 <sup>76</sup> AR 447.

17 <sup>77</sup> *Id.*

18 <sup>78</sup> *Id.*

19 <sup>79</sup> AR 449.

20 <sup>80</sup> AR 451.

21 <sup>81</sup> AR 861.

22 <sup>82</sup> *Id.*

1 On physical examination he had significant muscle tightening over the  
2 paraspinals, deep tendon reflexes decreased on the patella, decreased muscle  
3 strength in the lower left extremity and positive straight leg raising on the left.<sup>83</sup>  
4 She diagnosed him with left sciatica, left leg weakness and urinary incontinence.<sup>84</sup>

5 On May 6, 2020, Plaintiff had an MRI of the lumbar spine without contrast,  
6 due to lower back pain with bilateral leg radiculopathy.<sup>85</sup> It indicated moderate  
7 bilateral foraminal stenosis at L5-S1 due to ligamentous and facet hypertrophy.<sup>86</sup>  
8 At L4-5, it indicated moderate degenerative disc changes; disc extrusion which  
9 narrowed the lateral recesses and possibly caused bilateral nerve root  
10 impingement; and moderate to prominent foraminal stenosis on the left side and  
11 right side due to disc bulge and ligamentous and facet hypertrophy.<sup>87</sup> At the L3-4  
12 level and L2-3 level, it indicated moderate bilateral foraminal stenosis present due  
13 to ligamentous and facet hypertrophy.<sup>88</sup>

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17<sup>83</sup> *Id.*

18<sup>84</sup> *Id.*

19<sup>85</sup> AR 462.

20<sup>86</sup> *Id.*

21<sup>87</sup> *Id.*

22<sup>88</sup> *Id.*

1 On May 29, 2020, Plaintiff presented to James Campbell, DO, for evaluation  
2 of back pain and lower extremity pain.<sup>89</sup> Plaintiff reported a history of a  
3 discectomy at L5, with reinjury of his back in December 2019 at work.<sup>90</sup> Since the  
4 injury, pain had progressed and he had low back pain with radiating pain into his  
5 legs and numbness in his feet.<sup>91</sup> Multiple therapies such as physical therapy,  
6 injections and narcotic medication and gabapentin were unsuccessful.<sup>92</sup> On  
7 examination muscle strength was normal, sensation was intact, deep tendon  
8 reflexes were 2/4 and Hoffman's test was negative but there was an antalgic gait  
9 and limited range of motion of the lumbar spine.<sup>93</sup> Dr. Cambell stated: "There is  
10 severe degenerative disc disease at L4-5 with severe Modic endplate change as well  
11 as severe STIR signal change indicating inflammatory process from degenerative  
12 disc. There is also disc bulge with severe bilateral lateral recess stenosis and  
13 impingement around the L5 nerve roots. AP lateral flexion-extension x-rays of the  
14 lumbar spine obtained today were reviewed. There is degenerative disease that is  
15 severe in nature as described above at the right L4-5."<sup>94</sup> Dr. Campbell assessed

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18 <sup>89</sup> AR 636.

19 <sup>90</sup> *Id.*

20 <sup>91</sup> *Id.*

21 <sup>92</sup> AR 637.

22 <sup>93</sup> AR 639-640.

23 <sup>94</sup> AR 640.

1 Plaintiff with severe degenerative disc disease L4-5, previous laminectomy and  
2 severe lateral recess stenosis with radiculopathy into the lower extremities and  
3 opined that he required fusion surgery as well as decompressive surgery to  
4 decompress the nerve roots.<sup>95</sup>

5 On June 17, 2020, Plaintiff presented to PA Andelin and reported pain and  
6 urinary incontinence.<sup>96</sup> Marijuana helped his pain, but he had run out of over-the-  
7 counter drugs.<sup>97</sup>

8 On July 10, 2020, Plaintiff presented to Beatriz Garcia-Osorio, MA-C, and  
9 PA Andelin for follow-up.<sup>98</sup> Plaintiff reported that a month prior a neurosurgeon  
10 had recommended surgery and Plaintiff wanted a second opinion.<sup>99</sup> Plaintiff had  
11 been prescribed narcotics but did not take them, and still had pain radiating into  
12 his legs.<sup>100</sup> He was assessed with degenerative disc disease, lumbar spine; lumbar  
13 spondylosis; bilateral stenosis of lateral recess of the lumbar spine; urge

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17 <sup>95</sup> *Id.*

18 <sup>96</sup> AR 589.

19 <sup>97</sup> *Id.*

20 <sup>98</sup> AR 495.

21 <sup>99</sup> *Id.*

22 <sup>100</sup> *Id.*

1 incontinence; back pain; hypertension; lumbago with sciatica, left side; and he was  
2 advised of the benefits of short term narcotic medication for pain.<sup>101</sup>

3       On July 11, 2020, Plaintiff presented to Robert Deichert, MD.<sup>102</sup> His  
4 condition was stable and he was released after treatment with pain medication.<sup>103</sup>  
5 He reported that his low back pain had increased in the last month and he has  
6 pain radiating into his legs after an injury 6-12 months prior.<sup>104</sup> After reviewing an  
7 MRI of May 6, 2020, Dr. Deichert diagnosed lumbar pain due to central disc  
8 extrusion.<sup>105</sup> On July 25, 2020, Plaintiff again presented to Dr. Deichert with back  
9 pain.<sup>106</sup> Plaintiff was treated with pain medication and muscles relaxers for muscle  
10 spasm and pain and was discharged.<sup>107</sup> On examination, he was in mild distress  
11 and had low lumbar diffuse tenderness.<sup>108</sup>

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15<sup>101</sup> AR 497-498.

16<sup>102</sup> AR 456-57.

17<sup>103</sup> *Id.*

18<sup>104</sup> AR 458.

19<sup>105</sup> AR 459.

20<sup>106</sup> AR 454.

21<sup>107</sup> AR 455.

22<sup>108</sup> AR 455-56.

1 On July 22, 2020, Plaintiff presented to PA Andelin for follow-up and  
2 reported pain getting up and getting out of shower, difficulty bending over to put  
3 on shoes and limited mobility, even after taking narcotic pain medication.<sup>109</sup>  
4 Plaintiff was wearing slip on sandals and his mobility was greatly limited although  
5 he did not limp.<sup>110</sup> Lab results from a sample taken August 12, 2020, indicated  
6 that Plaintiff was positive for marijuana and his prescribed medications.<sup>111</sup> At a  
7 follow-up appointment on August 26, 2020, Plaintiff reported difficulty getting into  
8 his car and bending despite taking Percocet.<sup>112</sup> On September 21, 2020, Plaintiff  
9 presented to PA Andelin with increased nerve pain in both legs, causing numbness  
10 and swelling in the right upper thigh.<sup>113</sup> He reported that the pain is ten times  
11 worse when his Percocet wears off and that he had taken a few more than  
12 prescribed at night when the pain was worse and that he felt he needed a higher  
13 dose of Percocet.<sup>114</sup> PA Andelin increased Plaintiff's dosage of Percocet but advised  
14 that after Plaintiff's surgery the dosage would be tapered.<sup>115</sup>

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16 <sup>109</sup> AR 499.

17 <sup>110</sup> AR 499, 501.

18 <sup>111</sup> AR 506.

19 <sup>112</sup> AR 518.

20 <sup>113</sup> AR 523.

21 <sup>114</sup> *Id.*

22 <sup>115</sup> AR 526.

1 On October 2, 2020, Plaintiff presented to PA Andelin for follow-up after  
2 being examined by specialists.<sup>116</sup> On examination, he had an antalgic gait, he had  
3 reproducible lumbar back pain in the paraspinal region without spasm; normal hip  
4 and knee strength; straight leg raising positive on the right, but contralateral  
5 straight leg test negative; slump test positive on left; and no calf atrophy.<sup>117</sup> The  
6 results of his examinations by specialists were not received yet and Plaintiff was  
7 concerned that pain was minimally relieved with narcotics.<sup>118</sup> PA Andelin  
8 discussed that Plaintiff was not a good candidate for chronic narcotics because they  
9 only provide minimal relief and if increased further it would be unsafe levels.<sup>119</sup> On  
10 October 14, 2020, Plaintiff returned to discuss the results of his independent  
11 examinations.<sup>120</sup> PA Andelin noted that Plaintiff continued to have pain daily as  
12 well as difficulty sleeping, and that his pain was not well-controlled by narcotic  
13 medication.<sup>121</sup> PA Andelin opined that the MRI results supported a conclusion that  
14 Plaintiff's radicular pain started after his recent injury.<sup>122</sup> He noted that in March  
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16 <sup>116</sup> AR 527.

17 <sup>117</sup> AR 529.

18 <sup>118</sup> AR 530.

19 <sup>119</sup> *Id.*

20 <sup>120</sup> AR 531.

21 <sup>121</sup> *Id.*

22 <sup>122</sup> AR 534.

1 2019, Plaintiff was status post laminectomy and MRI indicated a bulge and broad-  
2 based central disc protrusion as well as a lateral extrusion and that there was mild  
3 displacement of the right L5 nerve root posteriorly.<sup>123</sup> The May 2020 MRI  
4 indicated moderate degenerative changes at L5, with moderate degenerative disc  
5 changes; disc extrusion which narrow the lateral recesses and possibly cause  
6 bilateral nerve root impingement; and moderate to prominent foraminal stenosis  
7 on the left side and right side due to disc bulge and ligamentous and facet  
8 hypertrophy.<sup>124</sup>

9 On November 30, 2020, Plaintiff presented to PA Andelin for follow up,  
10 reporting that his pain was the same but there was an increase in numbness and  
11 tingling in his feet and he had gained ten pounds due to inactivity.<sup>125</sup> He was  
12 requesting a refill of Percocet and had finished his Percocet early.<sup>126</sup> PA Andelin  
13 prescribed gabapentin and discussed tapering narcotics.<sup>127</sup> On December 29, 2020,  
14 Plaintiff presented to PA Andelin for an evaluation for DSHS.<sup>128</sup> PA Andelin noted  
15 that Plaintiff had a chronic back pain following a surgery five years ago and had  
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17 <sup>123</sup> *Id.*

18 <sup>124</sup> *Id.*

19 <sup>125</sup> AR 543.

20 <sup>126</sup> *Id.*

21 <sup>127</sup> AR 546.

22 <sup>128</sup> AR 553.

1 not worked since earlier in the year when he sustained a back injury when lifting  
2 at work.<sup>129</sup> Plaintiff reported pain radiating down both legs and numbness from  
3 sitting too long.<sup>130</sup> PA Andelin noted that Plaintiff was on narcotics and recently  
4 had cocaine in his urine which Plaintiff stated was a one-time use.<sup>131</sup> PA Andelin  
5 noted that Plaintiff had right shoulder surgery but presently had no pain in the  
6 joint.<sup>132</sup> On examination, Plaintiff was tender over the paraspinal lumbar area,  
7 reported severe pain in his right thigh with straight leg raising, and had normal  
8 knee strength and no deformity or atrophy.<sup>133</sup> PA Andelin advised to get surgery  
9 with state insurance rather than waiting for worker's compensation to pay, and  
10 advised that he was tapering narcotic medication and would terminate if illicit  
11 substances were found again.<sup>134</sup>

12 On December 29, 2020, Myrna Palasi, MD, reviewed Plaintiff's file and PA  
13 Andelin's report for DSHS and rendered an opinion regarding Plaintiff's functional  
14 capacity for 12 months.<sup>135</sup> Dr. Palasi opined that based on PA Andelin's findings

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16<sup>129</sup> *Id.*

17<sup>130</sup> *Id.*

18<sup>131</sup> *Id.*

19<sup>132</sup> *Id.*

20<sup>133</sup> AR 555.

21<sup>134</sup> AR 556.

22<sup>135</sup> AR 557.

1 Plaintiff had a moderate limitation in postural restrictions; fine or gross motor skill  
2 restrictions; and the ability to perform activities within a schedule, maintain  
3 attendance and be punctual.<sup>136</sup> She opined that he would be able to lift ten pounds  
4 maximum, frequently lift or carry small articles such as files or tools, and sit for  
5 most of the day and walk or stand for brief periods.<sup>137</sup> She opined that Plaintiff was  
6 unable to: lift 20, 50 or 100 pounds maximum; frequently lift and carry 10, 25, or  
7 50 pounds; stand for 6 hours; and sit for prolonged periods with occasional pushing  
8 and pulling.<sup>138</sup> She opined that the highest exertional level Plaintiff could perform  
9 was sedentary.<sup>139</sup> Dr. Palasi diagnosed Plaintiff with spondylosis, bilateral stenosis  
10 of lateral recess of lumbar spine; and degenerative disc disease.<sup>140</sup>

11 On January 8, 2021, Plaintiff was seen by PA Andelin and continued on his  
12 narcotic medication.<sup>141</sup>

13 On January 14, 2021, Dr. Palasi reviewed Plaintiff's file.<sup>142</sup> She noted that a  
14 treatment note from October 2020 indicated he had chronic back pain, limiting  
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16 <sup>136</sup> AR 558.

17 <sup>137</sup> *Id.*

18 <sup>138</sup> *Id.*

19 <sup>139</sup> *Id.*

20 <sup>140</sup> AR 559.

21 <sup>141</sup> AR 562.

22 <sup>142</sup> AR 610.

1 mobility, that narcotics improved his mobility; that he had a history of an L4-5  
2 laminectomy; that an MRI in May 2020 indicated degenerative disc disease with  
3 disc extrusion, and possible nerve root impingement.<sup>143</sup> She also noted a treatment  
4 note of December 2020 stated that he had back surgery 5 years ago and reports  
5 debilitating pain radiating down thighs posteriorly and had positive straight leg  
6 raising at 10 degrees.<sup>144</sup> She opined that the severity of Plaintiff's position closely  
7 approached SSA Listing 1.04A and that she recommended a less than sedentary  
8 RFC and a severity rating of 5 for failed back syndrome.<sup>145</sup> She opined that DAA  
9 was unrelated to his condition and that the symptoms would persist for 12  
10 months.<sup>146</sup> She opined the onset date was supported as of June 1, 2020.<sup>147</sup>

11 On March 15, 2021, Plaintiff presented to Dr. Campbell for a follow up.<sup>148</sup>  
12 Muscle strength was normal, sensation was intact, deep tendon reflexes were 2/4,  
13 and Plaintiff had an antalgic gait with limited range of motion in the lumbar  
14 spine.<sup>149</sup> Dr. Campbell opined that a year of conservative treatment had not

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<sup>143</sup> *Id.*

17<sup>144</sup> *Id.*

18<sup>145</sup> *Id.*

19<sup>146</sup> *Id.*

20<sup>147</sup> AR 611.

21<sup>148</sup> AR 668.

22<sup>149</sup> AR 671.

1 improved Plaintiff's back pain and he recommended an L4-5 transforaminal  
2 interbody lumbar fusion with posterior instrumentation.<sup>150</sup>

3 On May 11, 2021, Dr. Campbell performed a transforaminal interbody  
4 lumbar fusion with posterior instrumentation L4-5.<sup>151</sup> Plaintiff's preoperative and  
5 postoperative diagnosis was radiculopathy, degenerative disc disease, and low back  
6 pain.<sup>152</sup> Dr. Campbell performed a transforaminal lumbar interbody fusion at L4-5,  
7 placement of a biomechanical device at L4-5, right facetectomy and bilateral  
8 lumbar laminectomy at L4-5, and posterior lumbar instrumentation at L4-5 using  
9 Globus pedicle screws.<sup>153</sup> Following the surgery, Plaintiff had 8/10 surgical pain  
10 but resolved radicular pain, and moved slowly and cautiously due to pain but had  
11 good balance.<sup>154</sup>

12 On May 26, 2021, Plaintiff presented to Mitchell Parrish, PA for  
13 postoperative follow-up.<sup>155</sup> Overall he was well with improvement in symptoms but  
14 residual numbness and sharp pain into his feet.<sup>156</sup> Reflexes and strength were

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<sup>150</sup> AR 671-672.

17<sup>151</sup> AR 707, 710.

18<sup>152</sup> AR 717.

19<sup>153</sup> AR 717.

20<sup>154</sup> AR 724.

21<sup>155</sup> AR 749.

22<sup>156</sup> *Id.*

1 normal, range of motion was full, sensation was intact, and gait was antalgic.<sup>157</sup>  
2 Plaintiff was advised not to lift over 20 pounds and to avoid repetitive bending,  
3 stooping, or twisting.<sup>158</sup>

4 On June 7, 2021, Plaintiff presented to PA Andelin for follow-up and  
5 reported that he had been in a lot of pain since his surgery and not sleeping well  
6 despite narcotic pain medication.<sup>159</sup> Plaintiff reported that he continued to have  
7 pain radiating into his right leg but that it was less than before surgery.<sup>160</sup> On July  
8 19, 2021, Plaintiff presented to PA Andelin for follow up.<sup>161</sup> He reported that his  
9 radiating pain in his right leg resolved and that he has less back pain, but still felt  
10 pain in his left back and that bending increased it.<sup>162</sup>

11 On July 23, 2021, Plaintiff presented to Dr. Campbell for post-surgical follow  
12 up.<sup>163</sup> Plaintiff complained of continuing but improved back pain and requested

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16 <sup>157</sup> AR 750.

17 <sup>158</sup> *Id.*

18 <sup>159</sup> AR 765.

19 <sup>160</sup> *Id.*

20 <sup>161</sup> AR 761.

21 <sup>162</sup> *Id.*

22 <sup>163</sup> AR 971.

1 physical therapy.<sup>164</sup> Dr. Campbell found that Plaintiff's preoperative conditions had  
2 changed and he lifted his restrictions and released him to return to full duty.<sup>165</sup>

3 Plaintiff presented for initial assessment for post-surgical physical therapy  
4 on August 11, 2021, with Joanne Thomas, PT.<sup>166</sup> On August 19, 2021, Plaintiff  
5 presented to Russell Reavely, PTA for physical therapy.<sup>167</sup> PT Reavely noted  
6 decreased range of motion, decreased strength, abnormal posture, abnormal  
7 balance, gait deviations of abnormal pelvic and sacral alignment.<sup>168</sup> On  
8 examination Plaintiff had shaking of the left leg with straight leg raising and  
9 reduced spinal flexion when standing.<sup>169</sup>

10 On August 21, 2021, Plaintiff presented to PA Andelin for follow up and  
11 reported that he was doing well.<sup>170</sup> His exam was benign.<sup>171</sup>

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<sup>164</sup> *Id.*

16  
17<sup>165</sup> *Id.*

18<sup>166</sup> AR 967.

19<sup>167</sup> AR 963.

20<sup>168</sup> AR 964.

21<sup>169</sup> *Id.*

22<sup>170</sup> AR 757.

23<sup>171</sup> AR 759.

1 On September 2, 2021, Plaintiff presented to PT Thomas.<sup>172</sup> PT Thomas  
2 noted decreased range of motion, decreased strength, abnormal posture, abnormal  
3 balance, gait deviations of abnormal pelvic and sacral alignment.<sup>173</sup> PT Thomas  
4 noted that function was limited by pelvic dysfunction and mechanics of the lumbar  
5 fusion.<sup>174</sup> On September 14, 2021, Plaintiff presented to PT Reavely, PTA, and  
6 reported back pain.<sup>175</sup> PT Reavely noted decreased range of motion, decreased  
7 strength, abnormal posture, abnormal balance, gait deviations of abnormal pelvic  
8 and sacral alignment.<sup>176</sup> On November 11, 2021, Plaintiff completed his physical  
9 therapy plan.<sup>177</sup> At that time, he was capable of flexion to 93 degrees with pain in  
10 the right lumbar spine.<sup>178</sup> Plaintiff reported new symptoms of burning and  
11 stiffness, although he had been ready to transition to home exercise prior to this.<sup>179</sup>

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172 AR 960.

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173 *Id.*

17

174 AR 961.

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175 AR 957.

19

176 *Id.*

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177 AR 994.

21

178 *Id.*

22

179 AR 996.

1 On November 18, 2021, Plaintiff presented to Dr. Campbell and reported  
2 that he had completed his physical therapy visits but wanted to do more.<sup>180</sup>  
3 Dr. Campbell opined that Plaintiff's pre-operative low back pain had resolved and  
4 stated that he would not impose restrictions.<sup>181</sup> He refilled Plaintiff's physical  
5 therapy prescription and told him to return in six months.<sup>182</sup> An X-Ray taken the  
6 same day showed expected postoperative appearance of the spine status post  
7 discectomy with interbody fusion at L4-L5; an anterior wedge deformity of T12,  
8 chronic posttraumatic change versus developmental finding; and mild disk space  
9 narrowing.<sup>183</sup>

10 On January 12, 2022, Plaintiff presented to PA Andelin asking for chronic  
11 pain medication.<sup>184</sup> He admitted to using someone else's urine for a sample and  
12 said it was because he had not taken his medication.<sup>185</sup> On examination, he had  
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17 <sup>180</sup> AR 1165.

18 <sup>181</sup> *Id.*

19 <sup>182</sup> *Id.*

20 <sup>183</sup> AR 1171.

21 <sup>184</sup> AR 1411.

22 <sup>185</sup> *Id.*

1 tenderness in his spine but no spasm.<sup>186</sup> PA Andelin referred Plaintiff to pain  
2 management for consideration of injectable medication.<sup>187</sup>

3         On July 30, 2022, Plaintiff presented to the emergency center of Samaritan  
4 Healthcare Hospital with complaints of right elbow and biceps pain.<sup>188</sup> Plaintiff  
5 reported that he was at work, reaching to put boxes on a shelf and felt a “pop” in  
6 his shoulder.<sup>189</sup> An MRI without contrast indicated a complete tear of the distal  
7 biceps tendon with approximately 1.5 cm of proximal retraction of the torn stump,  
8 and regional soft tissue edema present.<sup>190</sup> On August 1, 2022, Plaintiff was  
9 admitted to Samaritan Healthcare Hospital where surgical repair of a right distal  
10 biceps tendon rupture was performed by orthopedic surgeon Leo Chough, MD.<sup>191</sup>  
11 Dr. Chough noted that Plaintiff presented on July 30, 2022, to the emergency room  
12 and was treated by Rich Eak, ARNP, who ordered an MRI which confirmed a  
13 complete rupture of the distal biceps.<sup>192</sup> Plaintiff’s pre-operative and post-operative

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16<sup>186</sup> AR 1413.

17<sup>187</sup> AR 1414.

18<sup>188</sup> AR 1668.

19<sup>189</sup> AR 1669.

20<sup>190</sup> AR 1670.

21<sup>191</sup> AR 1659.

22<sup>192</sup> *Id.*

1 diagnosis was right distal biceps tendon rupture.<sup>193</sup> Dr. Chough noted that the  
2 surgery went well with no complications and the plan was to have immediate range  
3 of motion of the hand, fingers, wrist and elbow; wound check should be done in 7-10  
4 days; and Plaintiff should appear in 6 weeks for follow up with X-rays.<sup>194</sup>

5 On August 29, 2022, Plaintiff presented to Brandon Penix, DO, for follow  
6 up.<sup>195</sup> On examination, he had right arm myalgias, he had tenderness in the  
7 trapezius and rhomboid, decreased range of motion and tenderness in the elbow,  
8 and weakness in the right elbow secondary to pain.<sup>196</sup> Dr. Penix noted that Plaintiff  
9 should have been scheduled for physical therapy and that he would need to be  
10 placed into therapy immediately to get on the typical timeline.<sup>197</sup> On August 30,  
11 2022, Plaintiff presented to Leo Chough, MD for follow up of an August 1, 2022  
12 surgical repair of right distal biceps tendon.<sup>198</sup> Despite instructions to move his  
13 shoulder to its fullest range of motion, Plaintiff kept his arm in a sling and it was  
14 quite stiff.<sup>199</sup> On examination, the incision was fully healed and there was passive

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16<sup>193</sup> AR 1664.

17<sup>194</sup> AR 1`665.

18<sup>195</sup> AR 1655.

19<sup>196</sup> AR 1655-1656.

20<sup>197</sup> AR 1656.

21<sup>198</sup> AR 1653.

22<sup>199</sup> *Id.*

1 motion to 30 degrees but Plaintiff was hesitant for any movement.<sup>200</sup> On August  
2 31, 2022, Plaintiff presented to Jacob Bruce, PT, for initial evaluation for physical  
3 therapy.<sup>201</sup> PT Bruce noted that Plaintiff had been referred for therapy after  
4 surgery on August 1, 2022, to repair a biceps tendon rupture.<sup>202</sup>

5 On September 19, 2022, Plaintiff presented to Dr. Penix for occupational  
6 therapy evaluation of his right arm following surgery on July 31, 2022.<sup>203</sup> On  
7 examination, he had right arm myalgias, he had tenderness in the trapezius and  
8 rhomboid, decreased range of motion and tenderness in the elbow, and weakness in  
9 the right elbow secondary to pain.<sup>204</sup> Plaintiff was diagnosed with rupture of distal  
10 biceps tendon, and DeGuervain's tenosynovitis, right.<sup>205</sup> On September 20, 2022,  
11 Plaintiff presented to Leo Chough, MD, for follow up of a repair of the right distal  
12 biceps.<sup>206</sup> Dr. Chough noted that Plaintiff was immobile for the first month after  
13 surgery and was trying to gain range of motion with therapy.<sup>207</sup> Plaintiff reported  
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15 <sup>200</sup> AR 1654.

16 <sup>201</sup> AR 1645.

17 <sup>202</sup> AR 1647.

18 <sup>203</sup> AR 1651.

19 <sup>204</sup> AR 1652.

20 <sup>205</sup> *Id.*

21 <sup>206</sup> AR 1650.

22 <sup>207</sup> *Id.*

1 improvement but continued numbness of the radial forearm toward the base of the  
2 thumb.<sup>208</sup> Dr. Chough opined that the numbness was transient and that Plaintiff  
3 was showing signs of improvement.<sup>209</sup>

4 On October 27, 2022, Plaintiff presented to Brett Degooyer, DO, for  
5 evaluation of a right arm injury that occurred on July 30, 2022, when he was  
6 reaching up to put boxes on a pallet.<sup>210</sup> Although released by surgeon he reported  
7 significant pain.<sup>211</sup> On November 17, 2022, Plaintiff presented to PA Andelin for  
8 follow up for diabetes, hypertension, and hyperlipidemia.<sup>212</sup> PA Andelin noted that  
9 he was doing well and that his biceps tendon repair was healing well in PT.<sup>213</sup> PA  
10 Andelin assessed him with diabetes mellitus, type 2; vision changes; long term use  
11 of oral hypoglycemic drugs; hypertension; and chronic kidney disease stage 2.<sup>214</sup>

12 On February 27, 2023, PA Andelin completed a form titled Medical  
13 Report.<sup>215</sup> He states that he first saw Plaintiff on January 27, 2019, and last saw

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14  
15 <sup>208</sup> *Id.*

16 <sup>209</sup> AR 1651.

17 <sup>210</sup> AR 1649.

18 <sup>211</sup> *Id.*

19 <sup>212</sup> AR 1680.

20 <sup>213</sup> *Id.*

21 <sup>214</sup> AR 1683.

22 <sup>215</sup> AR 1724-1726.

1 him on February 3, 2023, and that his diagnosis were radiculopathy, degenerative  
2 disc disease lumbar, spondylosis, and positive straight leg raising.<sup>216</sup> He stated that  
3 Plaintiff's symptoms were burning pain on the left side, tingling in the lower back  
4 near buttocks, and muscle spasms.<sup>217</sup> He opined that Plaintiff would need to  
5 elevate his legs for one third of the day due to back pain, and that Plaintiff's  
6 treatment included two lumbar back surgeries, physical therapy, oxycodone,  
7 hydrocodone, gabapentin, NSAIDS, and lidocaine.<sup>218</sup> PA Andelin opined that  
8 Plaintiff had no side effects from medication and that in the past he had  
9 drowsiness from gabapentin but did not take it anymore and that he had no  
10 physical or mental condition reasonably likely to cause pain.<sup>219</sup> PA Andelin opined  
11 that some work such as work requiring bending frequently would cause Plaintiff's  
12 condition to deteriorate but that a job such as driving a forklift would not.<sup>220</sup> PA  
13 Andelin opined that Plaintiff would miss four or more days of work per month  
14 because pain limits his mobility.<sup>221</sup> He opined that Plaintiff could perform light  
15 work and that he could only occasionally reach, handle, and finger, but added a

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17 <sup>216</sup> AR 1724.

18 <sup>217</sup> *Id.*

19 <sup>218</sup> *Id.*

20 <sup>219</sup> *Id.*

21 <sup>220</sup> *Id.*

22 <sup>221</sup> AR 1725.

1 narrative statement that Plaintiff is unable to abduct his thumb or flex his  
2 elbow.<sup>222</sup> PA Andelin opined that Plaintiff would be likely to be off task over thirty  
3 percent of the time and that these limitations were in place since May 2020.<sup>223</sup>

## **5. Analysis**

Initially, the Court notes that in her credibility analysis the ALJ acknowledged that there was a significant improvement in Plaintiff's condition after his fusion surgery but failed to consider that a separate period of disability existed. The Court will address the reasons given by the ALJ to find Plaintiff's subjective complaints less than credible.

a. The ALJ's reasoning that Plaintiff's allegations are inconsistent with the medical record.

The ALJ provided the following reasoning:

The claimant has considerable normal objective findings despite his allegations of debilitating pain and other symptoms. Although the record shows evidence of abnormal gait, the claimant's gait has often been without normal, and when his gait was disturbed, he was often able to perform other station testing such as tandem and heel-toe walking (Exhibits 3F, pp. 2, 5; 6F, p. 12; 11F, p. 135; 14F, p. 120 (normal); Exhibit 6F, p. 8; 7F, p. 11, 16, 20; 9F, p. 13; 12F, p. 16 (antalgic but with normal station testing); but see Exhibit 3F, p. 13; 4F, p. 47; 10F, p. 5; 11F, p. 57, 111; 14F, p. 76; (abnormal gait). The claimant has generally had normal reflex and sensation testing, despite complaints of numbness (Exhibits 3F, p. 3; 6F, p. 7; 7F, pp. 11, 16; 9F, p. 22; 10F, p. 5; 11F, p. 116, 127; 14F, p. 120; 15F, p. 38; 17F, p. 26; 18F, p. 10; but see Exhibit 6F, p. 12; 15F, p. 215; 16F, p. 143). Despite limited range of motion in the lumbar spine, the claimant has exhibited adequate to

222 *Id.*

223 AR 1726.

1 normal strength, except immediately following lumbar surgery  
2 (Exhibits 2F, p. 4; 3F, p. 6; 3F, p. 18; 4F, p. 15; 6F, pp. 11-12; 11F, pp.  
3 127, 135; 12F; 14F, p. 29; 15F, p. 50; 16F, p. 150; but see Exhibit 16F,  
4 p. 117).<sup>224</sup>

5 While the ALJ has correctly cited to some instances in which Plaintiff has  
6 been noted to have normal reflexes, sensation, and strength, the ALJ ignored the  
7 most compelling evidence of record – MRI and imaging tests which indicated  
8 degenerative changes at L5, with moderate degenerative disc changes; disc  
9 extrusion which narrow the lateral recesses and cause bilateral nerve root  
10 impingement; and moderate to prominent foraminal stenosis on the left side and  
11 right side due to disc bulge and ligamentous and facet hypertrophy.<sup>225</sup> The ALJ  
12 additionally ignored that on multiple occasions from multiple sources, Plaintiff had  
13 positive straight leg raising, which is indicative of a nerve root impingement.<sup>226</sup>  
14 She ignored evidence of weakness in Plaintiff's left leg, as well.<sup>227</sup>

15 While the ALJ did not misstate Plaintiff's record, in many of the treatment  
16 notes that the ALJ cited to as indicating normal reflex and sensation, the  
17 treatment notes also indicated that Plaintiff had abnormal gait, positive straight  
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19 <sup>224</sup> AR 23.

20 <sup>225</sup> AR 534.

21 <sup>226</sup> AR 449, 470, 529, 555, 610, 861, 872, 964, 1724.

22 <sup>227</sup> AR 642.

1 leg raising, and spasm on palpation.<sup>228</sup> The treatment notes cited to by the ALJ  
2 either contain some benign findings which she referenced and contain other  
3 findings indicating more severe symptomology or were notes from sources who  
4 examined Plaintiff post-fusion. As such, the records cited take the findings out of  
5 context. Context is crucial as “treatment records must be viewed in light of the  
6 overall diagnostic record.”<sup>229</sup> An ALJ may not cherry pick evidence to support a  
7 conclusion while ignoring other competent evidence in the record.<sup>230</sup> The ALJ did so  
8 in this matter.

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10 b. *The ALJ's reasoning that Plaintiff's condition improved with*  
11 *treatment.*

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13 <sup>228</sup> AR 644 (indicating positive straight leg raising); AR 891 (indicating moderately  
14 severe muscle spasm and antalgic gait); AR 1106 (indicating neural tension and  
15 dorsal foot hypoesthesia/paresthesia); AR 666, 671 (antalgic gait and limited range  
16 of motion in lumbar spine); AR 724 (steady gait immediately after fusion surgery);  
17 AR 750 (antalgic gait post-fusion, ambulating with use of a cane).

18 <sup>229</sup> *Ghanim v Colvin*, 763 F.3d 1154, 1164 (9th Cir. 2014).

19 <sup>230</sup> *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9th Cir. 1984) (cleaned up) (“Although  
20 it is within the power of the Secretary to make findings concerning the credibility  
21 of a witness ..., he cannot reach a conclusion first, and then attempt to justify it by  
22 ignoring competent evidence in the record that suggests an opposite result.”).

1       The ALJ reasoned as follows:

2       The claimant's symptoms have improved with therapeutic exercises  
3       (Exhibits 3F, pp. 10, 15; 17F, p. 6). His physical therapist indicated he  
4       was doing well and expected future progress and good outcomes  
5       (Exhibit 12F, p. 6). Pain medications were effective in controlling pain  
6       and increasing mobility (Exhibits 4F, pp. 41, 53; 11F, p. 60). The  
7       claimant recovered well from lumbar surgery, which improved his  
8       symptoms significantly, including eliminating radicular pain (Exhibit  
9       12F, p. 19; 15F, pp. 5, 14, 46). The claimant's bladder symptoms have  
10      improved with drinking more water and using bladder medications  
11      (Exhibits 4F, p. 61; 16F, p. 64). His improvement was such that James  
12      Campbell, D.O., concluded he was able to return to work without  
13      restrictions within three months of lumbar surgery (Exhibit 12F, p. 19).  
14      These improvements in functionality and symptoms are consistent with  
15      the non-debilitating functional capacity assigned.<sup>231</sup>

16      The ALJ's articulated reasoning supports the Court's conclusion that she  
17      failed to consider that a separate period of disability existed between the alleged  
18      onset date and a date post-fusion surgery. The ALJ acknowledges in her reasoning  
19      that there was a significant improvement in Plaintiff's condition after fusion  
20      surgery alleviated his radicular pain but did not consider that a period of sixteen  
21      months existed between the alleged onset date and the time that Dr. Campbell  
22      released Plaintiff to return to work post-surgery. Moreover, there was a fifteen-  
23      month period between the time that objective MRI imaging documented that  
24      Plaintiff suffered a nerve root impingement and the time that Dr. Campbell opined  
25      Plaintiff could return to work.

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26      <sup>231</sup> AR 23.

1        Additionally, the ALJ failed to consider that the medication which relieved  
2 Plaintiff's pain was in the form of powerful narcotics, that Plaintiff's treating  
3 sources indicated were not able to be used in the long-term.<sup>232</sup>

4 The ALJ failed to address the specific period prior to Dr. Campbell's  
5 authorization for Plaintiff to return to work post-fusion surgery. The Court  
6 concludes that this warrants remand.

c. The ALJ's reasoning that Plaintiff was noncompliant with treatment

9 A claimant's course of treatment, including an inadequately explained  
10 failure to seek treatment, is a relevant factor for the ALJ to consider when  
11 assessing the claimant's symptom reports.<sup>233</sup> Here, the ALJ articulated the  
12 following reasons to find Plaintiff noncompliant with treatment:

13 The record shows considerable instances of noncompliance with  
14 treatment recommendations. The claimant unilaterally ceased bladder  
15 medications because his symptoms were better, resulting in increased  
16 symptoms (Exhibit 16F, p. 64). The claimant has admitted to  
17 medication overuse (Exhibit 16F, p. 74). Additionally, although he  
testified he did not feel comfortable completing at-home physical  
therapy exercises, this is precisely the directive he was given by  
treatment providers (Exhibit 3F, pp. 11, 15). The claimant violated his  
pain contract by using cocaine, resulting in no pain medication for some  
time (Exhibit 1FF, p. 44; Hearing Testimony).<sup>234</sup>

232 AR 546.

<sup>233</sup> 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3).

234 AR 23.

Initially, the Court finds the ALJ's reasoning that Plaintiff discontinued bladder medication to be error. The Court notes that Plaintiff's claim for disability is based on the impairments caused by degenerative disc disease and Plaintiff has not alleged bladder or kidney disease as a basis for disability. Assuming that the ALJ was correct, and Plaintiff did discontinue his bladder medication without cause, it had no effect on his nerve root impingement. An ALJ must consider the basis for the limitations and not discount because of nonrelevant normal findings.<sup>235</sup>

The ALJ also erred in finding that Plaintiff violated his pain contract by his self-reported one-time use of cocaine. While the ALJ accurately stated that Plaintiff was not allowed pain medication for several weeks, she has failed to articulate any manner in which his inability to obtain narcotics for that time period resulted in greater inability to engage in substantial gainful activity, or any manner in which his nerve root impingement, which required surgical intervention, would have improved.

18 The ALJ found that Plaintiff's activities are inconsistent with his allegations  
19 because at the time of surgery he reported that he was fully independent with meal

<sup>235</sup> See *Ghanim v. Colvin*, 763 F.3d 1154, 1164 (9th Cir. 2014).

1 preparation, self-care, household chores, laundry, and transportation.<sup>236</sup> In doing  
2 so, the ALJ has taken the cited treatment note out of context.

3       The treatment record cited by the ALJ is one in which Plaintiff reported that  
4 prior to his injury, he was a laborer at BMW and enjoyed basketball.<sup>237</sup> The note  
5 continued that his “prior level of function” was that he was independent with self-  
6 care, meal preparation, household chores, and laundry and was an active driver.<sup>238</sup>  
7 The treatment note, taken in context with the accompanying language, reflects  
8 that the daily activities described did not indicate a present ability to perform  
9 those functions but indicated that he was able to do so before his injury.

10      For this reason, the Court concludes that the ALJ did not properly consider  
11 Plaintiff’s daily activities when assessing the credibility of his subjective testimony.

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<sup>236</sup> AR 24.

21      <sup>237</sup> AR 1208.

22      <sup>238</sup> AR 1208-1209.

1       6.     Summary

2           Because the ALJ did not give good reasons for discounting Plaintiff's  
3 symptom reports, a remand is warranted. On remand, the ALJ is directed to  
4 consider the consistency of Plaintiff's symptoms reports with the record as a whole,  
5 and to consider both the period prior to his fusion surgery and the period following  
6 his fusion surgery.

7       **B.     Medical Opinions: This issue is moot.**

8           Plaintiff argues the ALJ failed to properly assess the opinions of PA Andelin  
9 and Dr. Palasi as to both supportability and consistency. As discussed above, the  
10 ALJ failed to consider Plaintiff's limitations both prior to and after the fusion  
11 surgery. Accordingly, the ALJ failed to consider that Dr. Palasi's opinion was  
12 rendered during the time period prior to the fusion surgery and was supported by  
13 the record during that time period. Because the Court has remanded the case for  
14 consideration of the record as a whole, the ALJ will be required to reevaluate the  
15 medical opinions. At that time, the ALJ will be required to address the  
16 inconsistencies in PA Andelin's statements wherein he states that Plaintiff has  
17 pain limiting his function and also states that he has no pain which would limit his  
18 function. Because those issues will be addressed on remand, the Court finds this  
19 issue to be moot.

20       **C.     Remand for Further Proceedings**

21           Plaintiff submits a remand for payment of benefits is warranted. The  
22 decision whether to remand a case for additional evidence, or simply to award  
23

1 benefits, is within the discretion of the court.”<sup>239</sup> When the court reverses an ALJ’s  
2 decision for error, the court “ordinarily must remand to the agency for further  
3 proceedings.”<sup>240</sup>

4       Although this record supports a disability award from about April 2020 to  
5 May 2021, remand is necessary to allow the ALJ to determine the specific dates  
6 that Plaintiff’s lumbar spine symptoms, considering both his low back and  
7 radicular symptoms, prevented him from engaging in fulltime work. After doing so,  
8 the ALJ should then consider the subsequent period as a separate relevant period,  
9 and if necessary, the ALJ is to develop the medical record and order a physical  
10 consultative examination as to Plaintiff’s torn biceps tendon and other  
11 impairments. It is not clear what, if any, additional limitations are to be added to  
12 the RFC. Therefore, the ALJ should obtain testimony from a medical expert  
13 pertaining to Plaintiff’s impairments, and then consider any additional evidence  
14 presented, and make findings at each of the five steps of the sequential evaluation  
15 process.

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17       <sup>239</sup> *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987) (citing *Stone v. Heckler*,  
18 761 F.2d 530 (9th Cir. 1985)).

19       <sup>240</sup> *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017); *Benecke* 379 F.3d at 595  
20 (“[T]he proper course, except in rare circumstances, is to remand to the agency for  
21 additional investigation or explanation”); *Treichler v. Comm’r of Soc. Sec. Admin.*,  
22 775 F.3d 1090, 1099 (9th Cir. 2014).

#### IV. Conclusion

**Accordingly, IT IS HEREBY ORDERED:**

1. The ALJ's nondisability decision is **REVERSED**, and this matter is **REMANDED** to the Commissioner of Social Security for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g).
  2. The Clerk's Office shall **TERM** the parties' briefs, **ECF Nos. 11 and 14**, enter **JUDGMENT** in favor of **Plaintiff**, and **CLOSE** the case.

IT IS SO ORDERED. The Clerk's Office is directed to file this order and provide copies to all counsel.

DATED this 8th day of May, 2024.

Edward F. Shea  
EDWARD F. SHEA  
Senior United States District Judge